

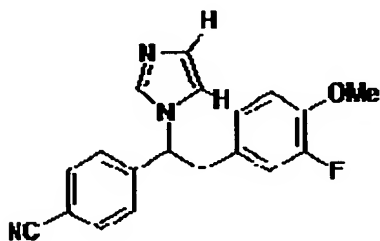
REMARKS

The Office Action of May 26, 2010 has been carefully considered.

The Office Action states that the provisional election of species has been given effect, and that claims not reading on the elected species have been withdrawn. However, claims 40-49 and 53-55 have been rejected, and claims 50-52 and 56-58 have been objected to as depending from a rejected base claim. All claims in the application have therefore been examined, and no claims have been withdrawn from consideration. In accordance with this examination, all claims previously designated as being "withdrawn" are not designated as being "previously presented."

Claims 40, 41, 43-49, and 53-55 have been rejected under 35 USC 102(e) over Adje et al. The Office Action takes the position that the compound of Example 9 anticipates the claimed invention.

The compound of Example 9 is 4-[N-(1H-imidazol-1-yl)-N-(3-fluoro-4-methoxyphenylmethyl)amino]benzonitrile hydrochloride. This compound has the structural formula:



H-Cl

Comparing the compound of Adje et al with claimed Formula (I),

$R_1 = R_2 = R_4 = H$

$R_3 = CN$

Q = CH₂

One of R₈ and R₉ = OCH₃ (4-position)

The other of R₈ and R₉ = F (3-position)

According to claim 40, both F and OCH₃ are possible substituents for the R₈ and R₉ positions. However, because Q = CH₂, the proviso applies that "when Q is (CH₂)_n, n is 0, 1 or 2, one of R₃ and R₈ is hydroxy, nitro, NR₁₀R₁₁, OSO₂NR₁₀R₁₁, NR₁₂SO₂NR₁₀R₁₁, or OSO₂NR₁₀SO₂NR₁₁R₁₂ group."

Because R₃ = CN, it must be R₈ that is hydroxy, nitro, NR₁₀R₁₁, OSO₂NR₁₀R₁₁, NR₁₂SO₂NR₁₀R₁₁, or OSO₂NR₁₀SO₂NR₁₁R₁₂ group. R₈ cannot be either F or OCH₃. While R₉ could be either F or OCH₃, both F and OCH₃ cannot be present together, in the manner shown in Example 9 of Adje et al, due to the proviso.

Therefore, Example 9 of Adje et al cannot anticipate the claimed invention, and withdrawal of this rejection is requested.

Claims 42 and 45 have been rejected under 35 USC 112, 2nd paragraph.

Claim 42 has been amended to depend from claim 40.

Claim 45 has been amended to remove to substituent "SO₂" from the definition of "Q."

Withdrawal of this rejection is requested.

Several typographical corrections have been made in claim 40, including correction of the spelling of "or" and "proviso."

Claims 50-52 and 56-58 have been found to be allowable over the art.

In view of the foregoing amendments and remarks, Applicants submit that the present application is now in condition for allowance. An early allowance of the application with amended claims is earnestly solicited.



Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ira J. Schultz".

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